

## SCHEDULES

### SCHEDULE 13 **E+W+S**

#### PROTECTIVE PROVISIONS

### **PART 4** **E+W+S**

#### FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

**32.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the PLA, for the protection of the PLA in relation to construction of the authorised development and, within any maintenance period defined in article 30(14) (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

#### **Definitions** **E+W+S**

**33.** In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying, renewal and works of maintenance within a maintenance period defined in article 30(14) (temporary use of land for maintaining the authorised development) and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation, and “construct” and “constructed” are to be construed accordingly;

“the PLA” means the Port of London Authority;

“plans” includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, such relevant hydraulic information about the river Thames as may be reasonably requested by the PLA;

“specified function” means any function of TfL under this Order (except any function under article 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights) or 27 (acquisition of subsoil, etc., only)) the exercise of which may affect the river Thames or any function of the PLA;

“specified work” means any part of the authorised development (which for this purpose includes the removal of any part of the authorised development), which—

(a) is, may be, or takes place in, on, under or over the surface of land below mean high water level forming part of the river Thames; or

(b) may affect the river Thames or any function of the PLA,

including any projection over the river Thames by any authorised work or any plant or machinery; and

“tunnelling works” means so much of Work No. 1 as is carried out wholly under the bed of the river Thames.

### Approval of detailed design **E+W+S**

34.—(1) TfL must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA, but the PLA's approval is not required under this paragraph for any tunnelling works forming part of a specified work.

(2) Where the PLA approves a suspension of the public right of navigation under article 17 (works in the river Thames: conditions), TfL is not required to obtain the PLA's approval under this paragraph for any specified function to be exercised in respect of that suspension of the public right of navigation, including under article 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development).

(3) TfL must submit to the PLA plans of the specified work or specified function and such further particulars as the PLA may, within 20 business days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(4) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river Thames;
- (b) the use of its land, or the river Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;
- (b) the programming of temporary works or the exercise of the specified function;
- (c) the removal of any temporary work and the undertaking by TfL of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (e) the expiry of the approval if TfL does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(6) Subject to sub-paragraph (7), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused within 30 business days of the paragraph 34 specified day.

(7) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(8) TfL must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and TfL must provide all reasonable facilities to enable that inspection and survey to take place.

(9) In this paragraph “the paragraph 34 specified day” means, in relation to any specified work or specified function—

- (a) the day on which plans and sections of that work are submitted to the PLA under sub-paragraph (1); or
- (b) the day on which TfL provides the PLA with all further particulars of the work that have been requested by the PLA under that sub-paragraph,

whichever is the later.

### **Design of the tunnelling works** E+W+S

**35.**—(1) TfL must undertake the detailed design and construction of the tunnelling works to ensure that, as far as is reasonably foreseeable, the navigable channel of the river Thames can be maintained by the PLA to a depth of at least 5.80 metres below chart datum.

(2) When complying with sub-paragraph (1) TfL must allow for potential ‘over-dredge’ of 0.5 metres attributable to standard dredging methodology.

(3) Prior to commencing construction of the tunnelling works and as soon as reasonably practicable after they each become available, TfL must provide to the PLA the following documents—

- (a) an Approval in Principle, or similar, demonstrating that the design requirement has been incorporated into the detailed design of the tunnelling works;
- (b) a Design Certificate demonstrating that the detailed design of the tunnelling works has satisfied the design requirement; and
- (c) a Check Certificate, completed by an independent person, demonstrating that the detailed design of the tunnelling works has satisfied the design requirement.

(4) TfL must supply to the PLA—

- (a) any of the drawings referred to in either of the certificates specified in sub-paragraphs (3) (b) and (3)(c); and
- (b) such other information relating to any of the documents provided under sub-paragraph (2) or (3)(a) as the PLA may reasonable require,

upon request made by the PLA within 10 business days of the day on which the PLA receives the document that gives rise to the request.

(5) If, following receipt of any of the documents supplied under sub-paragraphs (3) and (4), the PLA is not reasonably satisfied that the design requirement will be met, it may within 20 business days of the paragraph 35 specified day, notify TfL that the PLA is in dispute with TfL and accordingly refer the matter to arbitration under paragraph 52 to review the proposed detailed design of the tunnelling works so far as it concerns the design requirement.

(6) In this paragraph—

- (a) “Approval in Principle”, “Check Certificate” and “Design Certificate” have the same meaning as in the Design Manual for Roads and Bridges Volume 1 Section 1 Part 1 BD2/12;
- (b) “the design requirement” means the detailed design requirement specified in sub-paragraphs (1) and (2);
- (c) “the navigable channel” means Regions 2 and 4 as defined in article 52 (restrictions on other works in the river Thames);
- (d) “the paragraph 35 specified day” means—
  - (i) the day on which the documents referred to in sub-paragraph (3) are provided to the PLA under that sub-paragraph; or
  - (ii) the day on which TfL provides the PLA with all drawings and further information that has been requested by the PLA under sub-paragraph (4),

whichever is the later.

**As built drawings** E+W+S

**36.** As soon as reasonably practicable following the completion of the construction of the authorised development, TfL must provide to the PLA as built drawings of any specified works (but not including any work constructed or placed within the tunnels) in a form and scale to be agreed between TfL and the PLA to show the position of those works in relation to the river Thames.

**Discharges, etc.** E+W+S

**37.**—(1) TfL must not without the consent of the PLA exercise the powers conferred by article 14 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

**38.** TfL must not, in exercise of the powers conferred by article 14 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or is otherwise approved in writing by the PLA.

**Navigational lights, buoys, etc.** E+W+S

**39.**—(1) TfL must, at or near a specified work or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) The PLA must give TfL not less than 20 business days' written notice of a requirement under sub-paragraph (1) except in the case of emergency when the PLA must give such notice as is reasonably practicable.

**Directions as to lights** E+W+S

**40.** TfL must comply with any reasonable directions issued from time to time by the Harbour Master with regard to the lighting of—

- (a) a specified work; or
- (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function,

or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

### **Removal, etc. of the PLA's moorings and buoys** **E+W+S**

**41.**—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or the exercise of any specified function it is reasonably necessary for the PLA to incur the cost of—

- (a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;
- (b) laying down and removing substituted moorings or buoys; or
- (c) carrying out dredging operations for any such purpose,

not being costs which it would have incurred for any other reason, TfL must pay the costs reasonably so incurred by the PLA.

(2) The PLA must give to TfL not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which TfL may make in response to the notice within 10 business days of the receipt of the notice.

### **Removal of temporary works** **E+W+S**

**42.**—(1) On completion of the construction of the whole or any part of a permanent specified work, TfL must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 34 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 34 remove—
  - (i) in the case of completion of part, any temporary tidal work (other than a residual structure) carried out only for the purposes of that part of the permanent specified work;
  - (ii) on completion of all the specified works, any remaining temporary tidal work (other than a residual structure); and
  - (iii) in either case, any materials, plant and equipment used for such construction,

and make good the site to the reasonable satisfaction of the PLA.

(2) For the purposes of TfL making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

- (a) any residual structure is cut off by TfL at such level below the bed of the river Thames as the PLA may reasonably direct; and
- (b) TfL takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) As soon as reasonably practicable after TfL has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant TfL a works licence for that structure under section 66 (licensing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 3(1)(h) (disapplication of legislation, etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 (lands above mean high water level) of the 1968 Act.

(5) In this paragraph—

“residual structure” means any part of a temporary tidal work that the PLA agrees cannot reasonably be removed by TfL on completion of the construction of the permanent specified works; and

“tidal work” means any specified work any part of which is, or may be, or, in, under or over the surface of land below mean high water level forming part of the river Thames.

**Protective action** **E+W+S**

43.—(1) If any specified work or the exercise of any specified function—

- (a) is constructed or carried out otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given under paragraph 34(4); or
- (b) during construction or carrying out gives rise to sedimentation, scouring, currents or wave action, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require TfL at TfL's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a specified work or specified function to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Part of this Schedule; or
  - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river Thames.

(3) If TfL does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require TfL to—

- (a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
- (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, TfL must, in compliance with its duties under any enactment, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.

(5) If the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document, the PLA must notify TfL of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. TfL must implement either the measures that the PLA has notified to TfL or such other measures as TfL believes are necessary to counter the environmental impact identified, giving reasons to the PLA as to why it has implemented such other measures.

(6) In this paragraph “environmental document” means—

- (a) the environmental statement; and
- (b) any other document containing environmental information provided by TfL to the PLA for the purposes of any approval under paragraph 34.

### **Abandoned or decayed works** **E+W+S**

**44.**—(1) If a specified work is abandoned or falls into decay, the PLA may by notice in writing require TfL to take such reasonable steps as may be specified in the notice either to repair or restore the specified work, or any part of it, or to remove the specified work and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work.

(2) If any specified work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require TfL to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if TfL so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from TfL.

### **Facilities for navigation** **E+W+S**

**45.**—(1) TfL must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work or the exercise of any specified function.

(2) TfL must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at TfL's cost, from time to time such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work.

### **Survey of riverbed** **E+W+S**

**46.**—(1) The PLA may, at TfL's expense (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

- (a) before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 34;
- (b) before the commencement of construction of any other specified work, or the carrying out of any other specified function, approved under paragraph 34;
- (c) during the construction of any specified work, or the carrying out of any specified function, as is reasonably required; and
- (d) after completion of, respectively—
  - (i) any specified work and the exercise of all related specified functions; and
  - (ii) all the specified works constructed and specified functions carried out under this Order in relation to such construction,

of such parts of the river Thames as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of the relevant specified work, or the carrying out of a specified function as would, if it were to be constructed or carried out, constitute specified works, or give rise to operations, below mean high water level.

(2) The PLA must make available to TfL the results of any survey carried out under this paragraph.

(3) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which TfL has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

### **Statutory functions** **E+W+S**

**47.** Subject to article 3 (disapplication of legislation, etc.) the exercise in, under or over the river Thames by TfL of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the Harbour Master of any function conferred by or under any enactment.

### **Indemnity** **E+W+S**

**48.—**(1) TfL is responsible for and must make good to the PLA all financial costs, charges, damages losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

- (a) the construction or operation of a specified work or its failure;
- (b) the exercise of any specified function; or
- (c) any act or omission of TfL, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or exercise of a specified function dealing with any failure of a specified work,

and TfL must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of TfL; or
- (b) by TfL, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse TfL from liability under the provisions of this paragraph.

(3) The PLA must give TfL reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of TfL.

### **Compensation for temporary works** **E+W+S**

**49.—**(1) Regardless of article 3 (disapplication of legislation, etc.), compensation in respect of—

- (a) any specified work constructed on land specified in Schedule 7 (land of which only temporary possession may be taken) and belonging to the PLA;
- (b) any specified function exercised on that land;
- (c) the rights conferred in connection with construction of such a specified work; and



- (d) the carrying out of such a specified function,  
is payable to the PLA as if TfL has been required—
- (i) to obtain a licence for the work or the exercise of the function under section 66 (licensing of works) of the 1968 Act; and
  - (ii) to pay consideration for the licence determined in accordance with the provisions of section 67 (consideration for licence) of that Act.
- (2) For the avoidance of doubt, in determining the amount of compensation payable under this paragraph, no account is to be taken of the value of any other specified work whose construction is facilitated by the construction and use of any specified work mentioned in sub-paragraph (1).
- (3) This paragraph has effect in addition to the obligation to pay compensation in articles 29(8) (temporary use of land for carrying out the authorised development) and 30(9) (temporary use of land for maintaining the authorised development).

#### **Apparatus in the Silvertown Tunnel area** **E+W+S**

**50.**—(1) Whenever TfL receives an application from any person who is considering placing or doing anything that might require TfL's consent under article 47 (no apparatus in Silvertown Tunnel area without consent), TfL will inform the person concerned of the possible need to obtain the PLA's licence under section 66 (licensing of works) of the 1968 Act in relation to that matter and will recommend that the person contacts the PLA in order to discuss the matter with the PLA.

(2) Within 5 business days of giving a consent under article 47(1), TfL must notify the PLA in writing that consent has been given and in doing so must provide the PLA with the name and address of the person to whom the consent has been given and details of the apparatus or work to which the consent relates.

#### **Disposals, etc.** **E+W+S**

**51.** TfL must within 7 days after the completion of any sale, agreement or other transaction under article 59 (transfer of benefit of Order, etc.) in relation to which any powers, rights and obligations of TfL are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article 59, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

#### **Disputes** **E+W+S**

**52.** Any dispute arising between TfL and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 68 (arbitration).

**Changes to legislation:**

There are currently no known outstanding effects for the The Silvertown Tunnel Order 2018, PART 4.